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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

BLUEEARTH BIOFUELS, LLC,) Case No. 09-MC-00282 DAE-KSC
)
Plaintiff,) **PLAINTIFF BLUEEARTH**
) **BIOFUELS, LLC.'S REPLY TO**
v.) **NONPARTY SENNET**
) **CAPITAL, LLC'S**
HAWAIIAN ELECTRIC) **MEMORANDUM IN**
COMPANY, INC.; MAUI) **OPPOSITION TO**
ELECTRIC COMPANY, LTD.;) **BLUEEARTH BIOFUELS,**
ALOHA PETROLEUM, LTD.;) **LLC'S MOTION TO COMPEL**
AND, KARL E. STAHLKOPF,) **PRODUCTION OF**
Individually,) **DOCUMENTS FROM SENNET**
) **CAPITAL, LLC; AND**
Defendants.) **CERTIFICATE OF SERVICE**
)
) **HEARING:**
) DATE: December 8, 2009
) TIME: 11:00 a.m.
) JUDGE: Hon. Kevin S.C. Chang
) Trial: June 22, 2010

PLAINTIFF BLUEEARTH BIOFUELS, LLC'S REPLY TO
NONPARTY SENNET CAPITAL, LLC'S MEMORANDUM IN
OPPOSITION TO BLUEEARTH BIOFUELS, LLC'S MOTION TO
COMPEL PRODUCTION OF DOCUMENTS

In its attempt to conduct discovery on its claims, BlueEarth is stuck between a rock and a hard place: Mr. Stahlkopf adamantly refused to testify about the projects with which he is involved through his employment with Sennet, and Sennet refuses to produce documents regarding those projects. BlueEarth is left without any means to discover whether Sennet –

and by direct or indirect association, Mr. Stahlkopf – is involved with any renewable energy projects that might implicate BlueEarth’s proprietary information. BlueEarth is entitled to this discovery. *See FED. R. CIV. P.* 26(b) (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense . . . ”).

As noted in its opening brief, information about Sennet’s current renewable-energy projects is relevant to BlueEarth’s claims in at least two ways: first, if Sennet is working on a project similar to the BlueEarth project, BlueEarth is entitled to know whether Mr. Stahlkopf, in breach of the non-disclosure agreement between HECO and BlueEarth, shared or used any of BlueEarth’s proprietary information; and second, if Sennet is working on any renewable energy projects with HECO, MECO or Aloha, BlueEarth is entitled to know whether any of those parties shared BlueEarth’s proprietary information with Sennet or outside investors, in contravention of the non-disclosure agreements in place with each of those parties. BlueEarth has no way to discover this information without seeing Sennet’s documents.

Furthermore, Sennet admits that it has only “from a dozen to over two dozen renewable energy projects” in the works at any given time. Thus, it is not unreasonable or unduly burdensome to request that Sennet

produce documents related to only those projects that involve biofuels, and the parties in suit, out of that one or two dozen total projects.

In the alternative, should the Court find that such production would be unduly burdensome to Sennet, BlueEarth requests that Sennet be compelled to provide BlueEarth with a list containing the following information: identification of renewable-energy projects Sennet currently has in progress (or has had in progress since Mr. Stahlkopf joined Sennet on July 1, 2009); the parties involved in the projects; the technology involved in the projects; and a summary of the scope of the projects (e.g., provision of feedstock, building a plant, etc.).¹ At that point, BlueEarth can ascertain which of the specific projects it needs further information about, if any.

DATED: Honolulu, Hawaii, November 25, 2009.

/s/ John S. Edmunds
JOHN S. EDMUNDS
RONALD J. VERGA
JOY S. OMONAKA

Attorneys for Plaintiff
BLUEEARTH BIOFUELS, LLC

¹ As with any documents produced by Sennet to BlueEarth, Sennet may designate this list as “CONFIDENTIAL” pursuant to the protective order in place between the parties.

CERTIFICATE OF SERVICE

I hereby certify that, on the dae and by the method of service noted below, a true and correct copy of the foregoing was served on the following, at their last known addresses, on November 25, 2009:

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DATED: Honolulu, Hawaii, November 25, 2009.

/s/ John S. Edmunds
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